

required if C-Block licenses are to be implemented by viable entities in an increasingly competitive wireless marketplace. This goal can be accomplished only if PCS rules *encourage* market investment interest in C-Block entities.

Specifically, the Commission should waive or modify the following designated entity rules:

**A. Waive or Increase the C-Block Small Business Financial Caps - 47 C.F.R. § 24.720(b)**

The revenue and asset caps for C-Block small business licensees should be waived or increased to at least \$2 billion and \$8 billion respectively. As discussed above, the economics of the wireless business require greater access to equity funding. As a result of the WTO Agreement and the stream of mergers among telecommunications industry giants, small business licensees must compete with companies which enjoy substantially higher revenues and hold substantially more assets. The financial thresholds established for PCS, therefore, must reflect the size of competing companies and the capital-intensive nature of the PCS business.<sup>32/</sup>

In establishing low financial thresholds for the C-Block designated entities, the Commission and potential licensees of PCS spectrum expected that designated entities would be able to find "deep pocket" investors to permit the acquisition of PCS licenses and the build-out of PCS networks. However, C-Block licensees have found it increasingly difficult to locate strategic investors or to access capital through financial markets. C-Block licensees simply cannot compete in the marketplace unless they attract investors or buyers whose financial resources exceed the requirements of the existing designated entity financial caps.

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<sup>32/</sup> Increasing the small business financial caps likely will necessitate a waiver of the general designated entity financial caps for the entrepreneurs' block. R&S urges the Commission to grant a similar waiver of the general entrepreneur block caps to the extent it will promote competitive build-out and funding of all C Block licensees.

For the most part, the wireless competitors of C-Block small business PCS providers are affiliated with incumbent LECs or IXC's. On average, these companies earn revenues of \$14 billion, with some of the largest incumbent LECs and IXC's earning \$18 billion and \$79 billion respectively.<sup>33/</sup> Unless small businesses are able to attract investors or buyers that can provide capital, and expertise needed to compete with these formidable companies, they likely will be forced into bankruptcy. As the PCS market has developed, the need for economies of scope and scale has become increasingly evident. Without the ability to attract buyers or strategic partners unrestricted by the limitations of the existing designated entity C-Block financial caps, C-Block licenses will not be viable. The revenue and asset caps for C-Block, therefore, should be waived for purposes of distress sales. To promote greater investment in C-Block licensees, the revenue and asset caps also should be raised to at least \$2 billion and \$8 billion respectively.

**B. Treat Only Exercised Options and Other "Converted" Interests as Fully-Diluted for Eligibility Purposes - 47 C.F.R. § 24.709(b)(8)**

In establishing the C-Block eligibility rules, the Commission provided that unexercised options and convertible ownership interests would be considered as fully-diluted for purposes of determining whether the ownership requirements of the entrepreneurs' block are satisfied. At that time, the Commission was concerned that such interests would give investors "control" over PCS spectrum and potentially would deny small business entrepreneurs of the ability to control their PCS facilities and businesses.<sup>34/</sup> Nevertheless, the Commission should waive the rule

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<sup>33/</sup> See *Statistics of Communications Common Carriers*, Federal Communications Commission 1995/1996 Edition at Table 1.1.

<sup>34/</sup> See *Fifth Memorandum Opinion and Order*, PP Docket No. 93-253 ¶ 95 (stating that call options "would vest an impermissible degree of control in the applicant's so called 'non-controlling' investors").

because it continues to prevent C-Block licenses from locating strategic partners or viable "buy-out" investors.

Under current rules, potential investors are offered only limited inducements for their investment in small business PCS ventures. Indeed, they are either offered fixed returns based on loans made to PCS businesses or are permitted to take limited ownership interests that relegate them to the status of "minority" shareholders who must invest under rules more unfavorable than apply to non-designated entity investments.<sup>35/</sup> Without more flexible investment incentives, C-Block PCS licensees will be unable to attract strategic "buy-out" investors who seek flexibility in structuring their investments, and face no restriction in other wireless entity opportunities.

Moreover, unexercised options and other convertible interests have *not* traditionally been treated on a fully-diluted basis for other purposes, such as determining compliance with the general CMRS spectrum cap.<sup>36/</sup> In determining whether a licensee controls too much CMRS spectrum in a specific service area, the Commission's CMRS spectrum cap rules expressly recognize only *exercised* ownership options. Because options do not affect control of an enterprise, the identical approach should be taken with regard to C-Block licensees' eligibility.

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<sup>35/</sup> Although the Commission permits transfers of licenses to non-designated entities after the fifth year of licensing, 47 C.F.R. § 24.839, the PCS rules require the recoupment by the Commission of the bidding credits and installment payment benefits received by the small business licensees at the time of transfer. Moreover, because the value of the licenses have diminished significantly since the time of auctioning, it would be uneconomic for third parties to purchase these licenses under the current rules. Accordingly, there presently are few incentives that encourage investment in designated entities.

<sup>36/</sup> See 47 C.F.R. § 20.6(d)(5) ("Debt and instruments such as warrants, convertible debentures, options, and other interests . . . with rights of conversion to voting interests shall not be attributed unless and until conversion is effected . . .").

Finally, the Commission has suspended application of certain C-Block rules when circumstances so dictate for the benefit of the public.<sup>37</sup> Indeed, in applying its PCS rules, the Commission has been called upon in numerous instances to balance competing interests. Given present circumstances, the Commission should waive or modify the eligibility rule that treats all options and convertible interests as fully-diluted.<sup>38/</sup>

**C. Continue Suspension of Installment Payments - 47 C.F.R. § 24.711**

On March 31, 1997, the Commission temporarily suspended C-Block payment obligations pending consideration of proposed changes for making and collecting installment payments in the future.<sup>39/</sup> To relieve C-Block licensees of the financial burdens imposed by the prevailing unavailability of capital from traditional sources, the Commission should maintain the suspension until the fifth anniversary of the grant of the C-Block licenses and extend the repayment term from 10 years to 15 years.<sup>40/</sup>

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<sup>37/</sup> See e.g., *Order*, Southern Communications Systems, Inc. Request for Waiver of Section 24.711(a)(2) of the Commission's Rules Regarding Market No. B085, File No. 00551-CW-L-96 (rel. February 4, 1997); *Letter* to Melodie Virtue, Esq., Haley, Bader & Potts, P.L.C. from David Furth, Chief, Commercial Wireless Division, Wireless Telecommunications Bureau (rel. January 29, 1997) (granting waiver of Section 24.709(c)(2)(i)); *Order*, Northern Michigan PCS Consortium L.L.C. Request for Waiver of Sections 24.720(f) and (g) of the Commission's Rules (rel. January 29, 1997); *Order*, Waiver of Section 24.813 of the Commission's Rules -- General Requirements for the Broadband Personal Communications Service, PP Docket No. 93-253 (rel. May 19, 1995).

<sup>38/</sup> Moreover, the Commission should waive or modify Section 24.804 of its rules to reflect the U.S.'s commitments in the WTO Agreement. Specifically, the rules should permit foreign ownership in PCS licenses above current limits, which were imposed before the WTO Agreement was signed in February 1997.

<sup>39/</sup> See *Order*, In the Matter of Installment Payments for PCS Licenses (rel. March 31, 1997).

<sup>40/</sup> See *Letter* to William F. Caton, Secretary, FCC, from James H. Barker, Michael S. Wroblewski, counsel to Fortunet Communications, L.P. (filed May 9, 1997).

The extension of a grace period for submitting installment payments during this critical start-up period will encourage greater investment by third parties in C-Block entities, thereby speeding service to the public, without adversely impacting the collection of the money bid during the C-Block auctions. In fact, grant of this request will *enhance* the Commission's ability to collect under established C-Block payment schedules because it will increase the funds available for near-term roll-out of a competitive PCS service.

**D. Adjust Value of C Block Licenses to Reflect A & B Block Market Prices - 47 C.F.R. § 24.704, 24.711**

As recommended by MCI and General Wireless, Inc.,<sup>41/</sup> the Commission should permit adjustment of the value of C-Block licenses to reflect A & B Block market prices. Under our proposal, all C-Block licensees should be permitted to readjust their bid prices to reflect an average A and B Block "discount factor" to their current license installment debt. As proposed, all licensees would receive the *same percentage reduction* in their bid prices. They also would be given the option of: (1) making a one-time reduced payment for their licenses; or (2) assuming the installment payment obligations after the A & B Block discount factor is applied.

These adjustments are worthy of consideration because they no longer will burden C-Block licensees with inflated debt obligations that do not reflect the true value of the C-Block licenses based on dramatically changed market factors.

**V. The Public Interest Favors Waiver or Modification of the C-Block Rules**

Congress' 1993 mandate to ensure small business participation in the communications industry requires waiver or modification of certain PCS rules to allow all C-Block licensees to

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<sup>41/</sup> See Letter to William F. Caton, Secretary, Federal Communications Commission, from Leonard S. Sawicki, Director, FCC Affairs, (filed May 1, 1997); *General Wireless, Inc. Presentation* to the Wireless Telecommunications Bureau (May 6, 1997).

find viable business structures or buyers for their license operation. Indeed, any progress in diversifying the ownership of radio spectrum licenses will be undermined unless prompt relief is afforded to C-Block entrepreneurs.

The PCS rules identified above must be waived or modified to give potential investors and strategic partners the incentive to make C-Block licenses a viable business. Given the dramatic reshaping of the telecommunications landscape in the last three years, the Commission must seize the day and fundamentally refashion C-Block rules to promote the infusion of capital into the C-Block licensees. For some, the recommendations outlined above provide an exit option, with the licenses being reauctioned to those financially capable of constructing and operating the licensed systems. For others, a waiver or modification of the PCS ownership, transfer and spectrum cap rules identified above should permit C-Block licensees to find viable, interested investors and strategic "buy-out" partners that can provide greater access to capital, industry experience, and engineering expertise. R&S believes that the incentives outlined herein will induce increased investment in C-Block licensees.

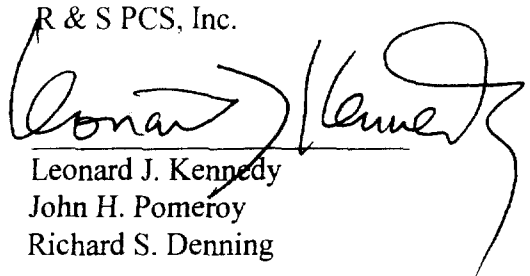
## **VI. Conclusion**

Consistent with the Commission's goals for small business participation in PCS, and for the foregoing reasons, R&S respectfully requests that the Commission grant its Petition For Waiver set forth herein under Section 24.819 of the Commission's Rules. To the extent R&S' Petition for Waiver is opposed in this rulemaking docket, R&S requests that consideration of its Petition be treated as a non-restrictive, permit-but-disclose proceeding under the Commission's

ex parte rules. Alternatively, R&S requests that its Petition be treated as informal comments in  
WT Docket No. 97-82.

Respectfully submitted,

R & S PCS, Inc.

  
By: Leonard J. Kennedy  
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June 23, 1997

## CERTIFICATE OF SERVICE

I, **Jeanette M. Corley**, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 23rd day of June, 1997, I caused copies of the foregoing "**Petition for Waiver and Comment of R&S PCS, Inc.**" to be served via hand delivery to the following:

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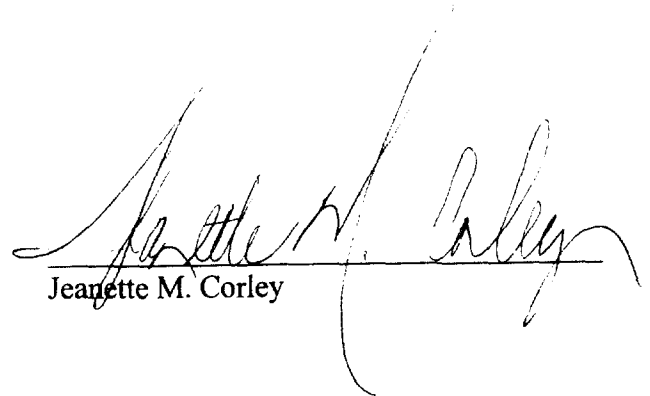
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Jeanette M. Corley

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**R & S PCS, INC.**

1900 W Place, N.E.  
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September 15, 1997

**VIA HAND DELIVERY**

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W., Rm. 814  
Washington, D.C. 20554

Re: Comment on Broadband C and F Block Rules and Installment Payment Issues  
WT Docket No. 97-82; DA 97-679  
**Ex Parte Presentation**

Dear Chairman Hundt:

R&S PCS, Inc. ("R&S") submits this letter to ensure that the relief fashioned by the Federal Communications Commission (the "Commission") for C Block licensees facing financial distress addresses the fundamental issues that prevent C Block licensees from competing in the wireless marketplace. Specifically, the Commission must focus on: (1) relieving licensees of the burdensome ownership restrictions that limit their access to capital; (2) permitting license transfers to non-designated entities; (3) eliminating the rules that give current effect to options; and (4) adopting an amnesty program that does not penalize C Block licensees or impair investments in C Block businesses. These issues must be addressed in lieu of re-auction or other actions that would reconstitute C block entities under existing, unworkable, rules.

I. The Commission Should Use Its Waiver Authority to Permit Necessary Changes in the Transfer and Ownership Rules of the C Block.

The Commission's principal objective in seeking to provide relief to C Block licensees should be to encourage the additional needed investment in C Block PCS licensees. As stated in R&S comments,<sup>1</sup> it is critical that the Commission waive the application of restrictive ownership rules, including limitations on the use of warrants and options, to increase the potential for third-

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<sup>1</sup> See *Comments of R & S PCS, Inc.*, WT Docket No. 97-82 (filed June 24, 1997); *Reply Comments of R & S PCS, Inc.*, WT Docket No. 97-82 (filed July 8, 1997).

party investment in C Block entities. The Commission must also waive the control group, outside investor and spectrum aggregation limitations that prevent the formation of flexible and efficient C Block ownership structures. To the extent that such waivers are to be issued on a case-by-case basis, the Commission should adopt rules for expedited processing, with a presumption that such waivers serve the public interest. Without such relief, C Block licensees will remain unable to obtain the capital, especially the equity, required to fund their businesses, build their systems and provide service to the public.<sup>2</sup>

It also is imperative that the Commission's relief promote direct *market-based* solutions to the difficulties facing small business license holders. As the history of the non-wireline cellular industry reveals, market forces can work to bring talent, spectrum and capital together. Just as the Commission's rules permitted essentially unfettered aggregation of cellular markets, the Commission must now allow secondary market transactions to ensure that C Block spectrum is utilized.<sup>3</sup> C Block bidders should be relieved of costly restrictions placed on license transfers to non-designated entities. Moreover, the companies best equipped to co-venture with C Block licensees should be permitted to hold *non-controlling* interests in PCS businesses, notwithstanding the specific level of their *de jure* ownership.

Through the issuance of waivers, on an expedited basis, that address the *fundamental* problems facing small business PCS entities, the Commission can relieve C Block licensees of the dire effects of overly-restrictive PCS rules. The Commission has on numerous occasions

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<sup>2/</sup> Logic suggests and experience now shows that C Block businesses will not be as attractive CMRS investments as AirTouch, for example, and that a C Block licensee's cost of capital will be substantially higher. The higher cost of capital and restrictive ownership rules have for practical purposes made the price of participation in C Block entities prohibitive.

<sup>3/</sup> Indeed, following the cellular lotteries in the 1980s, license transfers, consolidations and settlements of MSA/RSA markets resulted in the creation of partial, non-controlling ownership interests in cellular licenses that were essential to the emergence of a financially sound, more competitive cellular industry. The freedom non-wireline cellular licensees possessed to strike prudent arrangements allowed them to develop quickly. The Commission must allow C Block licensees the same freedom and flexibility that is possessed by their competitors for capital and customers. There is reason to believe that a re-auction may be an inefficient allocation mechanism at this stage in the development of the C block. The difficulties faced by licensees are not ones of start-up capital. Instead, they relate to creating an environment favoring *additional* investment.

adopted policies that adapt its rules to new circumstances. Granting rule waivers that increase licensee flexibility with respect to ownership, operation and alienability when Commission licenses are in financial distress serves the public interest.<sup>4</sup>

## II. Any Amnesty Proposal Must Present Viable Alternatives

In addition to the above waiver measures, the Commission also should provide alternatives that do not penalize investors and allow licensees to exit the business. Any C-Block amnesty license return framework ultimately must be more attractive to C Block licenses and their investors than declaring bankruptcy and potentially tying up C Block licenses for years to come.

To be meaningful, any amnesty option must recognize the value of payments already made to the Commission. These payments should be refunded to C-block licenses in the form of (1) cash refunds or (2) FCC auction bidding credits that are transferable to any party who participates in future FCC auctions. The Commission should allow parties to securitize and transfer these bidding interests to the account of other bidders in future auctions in order to maximize the value of such credits in the market and future FCC auctions. Unless C Block investors are able to preserve the value of their investments, or are given an opportunity to recoup a significant portion of the upfront monies, they will not likely support the amnesty option. In addition, it is crucial that a sufficient amount of time be afforded to C Block licensees, prior to the amnesty window's close, to explore transfer opportunities, which may allow the Commission to avoid the expense and time of re-auctioning the spectrum.

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<sup>4/</sup> See e.g. 47 C.F.R § 73.3555 Note 7 ("The Commission will look favorably on waiver applications that involve "failed" broadcast stations); *Network Properties of America, Ltd.*, 10 Commission Rcd 12413 (1995) (waiving one-to-a-market rule to enable applicant to acquire an AM radio station experiencing "on-going financial difficulties"); *1310, Inc.*, 10 Commission Rcd 7228 (1995) (waiving one-to-a-market rule when applicant claimed AM station "will soon be insolvent unless proposed combination is permitted"); *Voice of the Caverns, Inc.*, 4 Commission 2d 946 (1966) (waiving holding period as applied to broadcast station in financial distress); see also 47 C.F.R § 76.505(e)(6)(i)(A) and (B) ("The Commission may waive [certain ownership restrictions] . . . if . . . (A) the affected cable operator or local exchange carrier would be subjected to undue economic distress by the enforcement of such provisions [or] (B) the systems or facilities would not be economically viable if such provisions were enforced").

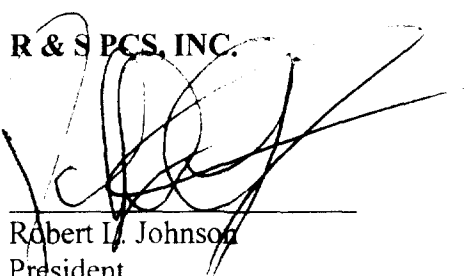
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Some commenters have endorsed rapid, cash re-auctions, contending they offer licensees amnesty. Amnesty plans that penalize C Block licensees and make recoupment on returned licenses dependent on the proceeds from future auctions will add to the uncertainty of the prospects for C Block licensees without resolving fundamental issues that inhibit their development. Moreover, penalizing small business entrepreneurs does not constitute meaningful relief to C Block licensees. Indeed, such plans offer little benefit over traditional bankruptcy proceedings in which the value of the company and its assets, including the PCS license, can be preserved pending a subsequent workout or reorganization. At best, while rapid re-auction may be a viable option for licensees that overbid in the initial C Block auction, it does not provide relief for those licensees that did not overbid and nonetheless face considerable barriers to obtaining additional capital.

The decisions facing the Commission and C Block licensees at this moment are of critical importance. The Commission's statutory mandate is to promote widespread dissemination of licenses. A long-term targeted solution is required. A "quick fix" that merely buys a little time will be harmful. The Commission should adopt expedited waiver procedures to allow small businesses to attract capital and compete with larger players in the wireless marketplace. Further, it should also adopt amnesty procedures that preserve existing investments, do not penalize existing licensees and encourage transfers of on-going businesses to new entities financially capable of building out competitive PCS systems using C Block spectrum.

Respectfully submitted,

**R & S PCS, INC.**



Robert L. Johnson  
President

cc: Commissioner Quello  
Commissioner Rachelle B. Chong  
Commissioner Susan Ness  
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